IN THE HIGH COURT OF JUDICATURE AT BILASPUR

M.A. (C) No. 851 /2007

APPELLANT — Chandradeep Singh S/o. o late Shri

NON CLAIMANT — Tahbal Singh, aged about 62 years, R/o. Quarter No.10 C , Street No. 5 , Sector -2 Bhilai, Tahsil and District – Durg (C.G.)

VERSUS

RESPONDENTS 1. Smt. Kamlesh Sharma , aged about 48

CLAIMANTS Years , W/o. Shri Puran Lal Sharma, Occupation- House Wife,

2. Puran lal Sharma , aged about 50 Years S/o. Shri Govind ram Sharma,

Both are r/o. M. P. Housing Board Colony, Nandani Road Bhilai, Tahsil & Distt.- Durg (C.G.)

NON CLAIMANT. 3. The National Insurance Company Limited, Branch Office - Bhilai, through regional Manager, Regional Office Mobin Mahal G.E. Road Raipur (C.G.)

APPEAL UNDER SECTION 173 OF MOTOR VEHICLE ACT

HIGH COURT OF CHHATTISGARH AT BILASPUR
DIVISION BENCH
HON'BLE SHRI I.M. QUDDUSI &
HON'BLE SHRI GULAM MINHAJUDDIN, JJ.

M.A. (C) NO.849 OF 2007

APPELLANT : Chandradeep Singh
Versus
RESPONDENTS : Smt. Kavita Meshram & others

M.A. (C) NO.851 OF 2007

APPELLANT : Chandradeep Singh
Versus
RESPONDENTS : Smt. Kamlesh Sharma & others
&

M.A. (C) NO.852 OF 2007

APPELLANT : Chandradeep Singh
Versus
RESPONDENTS : Smt. Sharda Devi & others

Present:
Mr. Siddharth Rathod, Adv. for the appellants in all the appeals.
Mr. Raj Awashty, Adv. for respondent-Insurance Company in all the appeals.
None for the other respondents served.

ORDER (Oral)
(20.6.2011)

Per I.M. Quddusi, J.

1. Heard.
2. M.A. (c) No.849/07 & 851/07 filed against the award dated 02.02.2007 passed in Claims Case No.48/06 & 52/06 respectively by the learned 11th Additional Motor Accident Claims Tribunal (FTC), Durg and M.A. (C) No.852/07 filed against the award dated 16.8.2007 passed in Claim Case No.57/07 by the learned 9th Additional Motor Accident Claims Tribunal (FTC), Durg are being disposed of by this common order as all these appeals arose out of the same accident.
3. The appellant, who is owner of Toyota Qualis Car bearing registration number CG06-A-7313, has filed these appeals against the impugned awards imposing liability on him to pay compensation to the claimants of the above claim cases on the ground that no premium was paid of the occupants of car

to the insurance policy and hence the appellant-owner is liable to pay amount of compensation to the claimants.

4. Facts of the case, in brief, are that on 22.5.2005 the deceased persons were going in Toyata Qualis car to attend *baraat* at Singhanghat, Maharashtra. At about 5.00 a.m. when they reached near Mauda Police Station, District Nagpur, there was head-on collision between the said car and a dumper bearing registration number MH36-184 as a result driver of Qualis Car namely Manoj Kumar, his son and one Ravindra @ Ravi Meshram died. The claimants of respective deceased have claim applications seeking compensation to the tune of Rs.19,50,000/-, Rs.25,50,000/- & Rs.82,00,000/- respectively for the death of the deceased persons.
5. The learned Claims Tribunal, on close scrutiny of evidence led, material placed and submissions made by the parties, has partly allowed the claim applications of the claimants and held the appellant-owner liable to pay compensation to the claimants.
6. We have heard learned counsel for the parties. We have also perused the records of the Claims Tribunal as also the impugned award.
7. Perusal of the records shows that insurance policy of Toyata Car was a package policy (comprehensive policy) and this fact has not been disputed by the learned counsel for the respondent-Insurance Company. The Insurance Regulatory and Development Authority has issued a circular dated 16.11.2009 making clarification about the circulars issued by the Tariff Advisory Committee dated 18.3.1978 & 2.6.1986. The operative part of the Circular Dated 16.11.2009 is quoted herein below:-

> "The above circulars make it clear that the insurance liability in respect of occupant (s) carried in a private care and pillion rider carried on two-wheeler is covered under the Standard Motor Package Policy. Therefore, this circular is binding upon the insurance companies for the reason that the deceased was certainly an occupant of the private car and in the aforesaid circular it has been clarified that the occupant in a private car is covered under the comprehensive insurance policy.
>
> All General Insurers are advised to adhere to the aforementioned circulars and any non-compliance of the same would be viewed seriously by the Authority."

(37)

8. In view of above, since the deceased was one of the occupants of the private car and his risk was covered under the policy issued by the insurer, it was not necessary to pay separate premium for the occupants. Thus, we are of the opinion that the Insurance Company is liable to pay compensation and not the owner of private car i.e. appellant herein.

9. For the foregoing reasons, we allow this appeal and hold that the appellant-owner of Toyota Qualis car is not liable to pay compensation and that part of the impugned award is hereby set-aside. We further direct that the liability to pay the compensation involved in the award is of the respondent-Insurance Company. In case any amount deposited by the appellant-owner has been withdrawn by the claimants, it will be open for him to recover the same from the insurer of the vehicle. However, if the amount, so deposited, has not been withdrawn so far, the appellant shall be allowed to withdraw the same. Rest of the conditions and findings of impugned award are hereby confirmed. It is hereby clarified that claimants are free to execute the award against the insurer of the vehicle.

10. Before parting with the matter, we would like to observe that it appears that in the cases of package policy (also known as 'comprehensive policy') where risk of occupants of a private car or pillion rider of a two wheeler is covered, the representatives of General Insurance Companies do not apprise the Claims Tribunals about the instructions issued by the Insurance Regulatory and Development Authority and the Tariff Advisory Committee and therefore the Claims Tribunals are fixing liability on the owner of a private vehicle in such cases. Therefore, the Registry is directed to send a copy of this order to all the District Judges of the State with a request to communicate the same to all the Motor Accident Claims Tribunals functioning in their respective Districts.

11. The appeals are allowed to the extent indicated above. A copy of this order be placed in M.A. (C) No.851/07 & 852/07.

12. Certified copy as per rules.

Sd/-
G.Minhajjudin
Judge

Sd/-
I.M.Quddusi
Judge

Roshan/-